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Legal Dept.

9 **BRANCH**

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The accused in this case has been charged for contravention of Government Order, Civil Supplies Department, No.110/ dated the 9th May 1951, which banned the removal of cottonseed from any place in any of the Zones A, B & C in the Schedule to the said Order to any place outside the limits of any of those Zones. It is alleged that he removed 100 bags of cottonseed from Barsi in Zone C to Wadi Bundar in Zone A on the 10th September 1951. In defence he has invited attention to Government of India, Ministry to Food and Agriculture, Notification, No. F.30-8/50 S.P., dated the 15th September 1951, issued under section 3 of the Essential Supplies (Temporary powers) Act, 1946, which directed that no order made by a State Government shall have effect so as to prohibit the movement of cottonseeds from any place within the State to any place within or outside the State. The validity of this Notification in so far as it purported to remove the ban imposed by the Civil Supplies Department Notification No. 110/1, dated the 9th May 1951, had been doubted by the A.J.A. in his opinions dated the 20th October 1951 concurred in by the Advocate General and No. G-136, dated the 25th March 1952. Subsequently the Civil Supplies Department issued a Press Note on the 27th October 1951 pointing out that in spite of the notification of the Government of India, datedthe 15th September 1951 the control on removal of cottonseeds imposed by the Bombay Government Notification datedthe 9th May 1951 still continued.

The offence in this case was committed 4 days after the issue of the Government of India Notification and before the issue of the Bombay Government Press Note clarifying the legal position. A layman is likely to be misled by the

Government of India Notification into believing that the transport of cottonseeds from one Zone to another in the State is no more an offence. On that plea the Court is likely to hold that there was absence of mens rea.

Besides Bombay Government Order, dated the 9th May 1951 had since been cancelled on the 13th March 1952 and there are at present no restrictions on the removal of cottonseeds. It is true that in spite of the cancellation of the said notification the prosecution can still be proceeded with in view of the penal provision in section 10 xxxx of the Bombay Essential Commodities and Cattle (Control) Act, 1946, but in view of the above facts even if the offence is held proved the Court will treat it as technical and impose only a nominal sentence. There is therefore no objection to the withdrawal of the prosecution in this case.

Yd/- ...../...

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Remembrancer of Legal Affairs.

F.R. to C.P.O., No. C-209, dated the 23rd May 1953.

Sen.
10.8.56.
4 Copies.

The Government Of India issued the cotton seeds (Removal of Control) Order, 1952 (Order No. S.R.O.529, dated 22-3-52) under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 on the 22nd March 1952. Under the said Order it has been inter-alia provided that no order made by any State Government under the Essential Supplies (Temporary Powers) Act, 1946 or any other Act shall have effect so as to prohibit or restrict the movement of cotton seed from any place in that State to any other place within or on side that State. For the reasons stated in A.L.A's opinion of 20th October 1951 Government of India's Order would not affect the powers of this Government to issue orders in respect of the cotton seed under the Bombay Essential Commodities and Cattle (Control) Act, 1946 (please see A.L.A's opinion No. G-128, dated 25-3-52). However the Government of Bombay's Order No. 119/I, dated the 9th May 1951 imposing ban on removal of cotton seed from any of the three specified zones in Bombay State outside each of the zones was already cancelled on 13th March 1952 and no other order issued under the Bombay Act imposed any ban on movement of cotton seed. Consequently there was no ban from 13th March 1952 on the removal of cotton seed from Bombay State to any other State. Under clause 3 of the Cotton Seed (Removal of Control) Order, 1952, the order extends to all the States ~~whether~~ where Essential Supplies (Temporary Powers) Act, 1946 applies except the State of Punjab. The effect of this provision is that the orders prohibiting movement if any issued by the Punjab Government are to have effect notwithstanding this Order. Therefore, the view taken by the Civil Supplies Department in their letter No. 119/I, dated the 17th April 1952 that in view of the Government of ~~India~~ India's Order No. S.R.O. 529, dated the 22nd March 1952 cotton seed could not be moved from ~~the~~ Bombay t Punjab, is not correct. However under clause 3 of

(Control) Order, 1952 as amended on 4th February 1953 ban on movement of cotton seed from certain specified districts of Bombay State to any place within or outside the State has been reimposed. Consequently it would not be legal from 4th February 1953 to remove cotton seed from any of those specified districts to any place in Punjab.

Id/- .....

Secretary to Government.

F.D. to C.S.D., No. G-335, dated the 5th September 1953.

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10.8.53.
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